

REMARKS

Claims 1-4, 6-22, 24-27, 29, 31-34, 36, and 37 are pending and stand finally rejected. Reconsideration is respectfully requested in view of the following remarks.

Claims 1-4, 6-22, 24-27, 29, 31-34, 36, and 37 were rejected under 35 USC §103(a) as being unpatentable over Thornton et al. in view of Caldwell and Gore. Applicant respectfully traverses this rejection.

With regard to Thornton et al., the Examiner first asserts that Thornton teaches a composite material comprising a first film layer resistant to penetration by liquid water impermeable to water vapor, equated to applicant's "functional layer." Applicant is not claiming a "functional layer," but rather a laminate comprising an expanded polytetrafluoroethylene functional layer. As admitted by the Examiner in the Final Office Action, Thornton fails to disclose expanded polytetrafluoroethylene functional layers. Thus, the rejection of the claims must be based upon the combination of Thornton et al. in view of Caldwell and further in view of Gore. Applicant respectfully submits that the Examiner has arrived at the present rejection utilizing impermissible hindsight reconstruction. Specifically, applicant submits that the Examiner must look at each reference for all that it teaches, not just isolated portions of the reference, which when combined with other isolated portions of references, results in the claimed invention.


Applicant respectfully submits that one skilled in the art, without the benefit of applicant's disclosure, would never be motivated to combine the teachings of Thornton, Caldwell, and Gore as suggested in the Office Action. Specifically, the Examiner asserts that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the leather outer layer of Thornton by providing it with a water-repellant internal coating of Caldwell with the motivation of having a porous material that will repel water while allowing the material to breathe. Applicant submits that the Examiner has failed to consider the full teaching of Caldwell and, instead, has picked an isolated portion of Caldwell to combine with the teachings of Thornton and Gore, utilizing applicant's disclosure as a road map, to arrive at the combination set forth in the Office Action. Applicant respectfully directs the Examiner's attention to, for example, column 53, lines 4-8 of Caldwell, wherein it is specifically stated that Caldwell's treated fabric is "generally superior to *** GORE-TEX® fabric" (i.e., an ePTFE-containing fabric construction) for breathability and, to column 56, lines 46-49, wherein Caldwell states that his treated fabric is "comparable to the higher cost, so-called breathable waterproof fabrics currently commercially available" for waterproofness. Thus, applicant submits that, without using the present application as a road map to arrive at the currently claimed invention, one skilled in the art would never be motivated to modify Thornton by laminating the fabric of Caldwell to the functional layer of Thornton or to the ePTFE layer of Gore. One would be motivated, conversely,

to simply use the material of Caldwell to skip the very expensive and laborious steps of attempting to laminate a hydrophobicizer-saturated fabric to a fluoropolymer (i.e., expanded polytetrafluoroethylene) membrane. One skilled in the art would clearly expect the step of laminating together two such materials to be very difficult. This is only further demonstrated by the disclosure of Driskill (discussed in the previous response to the previous Office Action). Moreover, clearly one would never be motivated to pick and choose the isolated disclosures of the references relied upon by the Examiner to somehow conclude that a powder adhesive could be used to obtain the claimed laminate having the claimed water-vapor-transmission resistance of less than $600 \times 10^{-3} (\text{m}^2 \text{mbar})/\text{W}$, and the crumple flex durability of at least 50,000 cycles. Applicant submits that if anything, one skilled in the art, when presented with the prior art relied upon by the Examiner, would be motivated to do away with the ePTFE layer disclosed by Gore.

Thus, it is quite clear that the Examiner has engaged in impermissible hindsight reconstruction, utilizing applicant's disclosure as a road map to pick and choose through isolated disclosures of the prior art to arrive at the presently claimed invention. Accordingly, applicant respectfully requests that the Examiner withdraw the rejections.

Should the Office have any questions, the Office is invited to telephone applicant's undersigned representative.

Respectfully submitted,



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